87-1927

SUPREME COURT, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DOROTHY ANN KNOX and
KIMBERLY LAWANDA WARE,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
NOS. 85-5952, 86-5089 and 86-5097

****

PETITION FOR WRIT OF CERTIORARI

****

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court committed error in denying the Defendants' motion to suppress because:

(a) The Defendants were seized without a reasonable or articulable suspicion that Defendants were engaged in criminal activity.

(b) The scope of the seizure (removing the Defendants from a public place in the airport to separate security rooms for custodial interrogation) exceeded the limits of an investigatory field stop.

(c) The duration of the seizure (approximately thirty minutes) exceeded the permissible limits for an investigatory field stop.

All of the above violating the Defendants' rights guaranteed by the

Fourth Amendment of the Constitution of the United States.

II. Whether the Court erred in denying the Defendants' motion to suppress on the basis that the Defendants had abandoned the unisex bag in which drugs were found by stating that they did not own the bag and, if so, whether said abandonment was tainted by the unlawful seizure of the Defendants, and interrogation without Miranda warnings, all in violation of the rights guaranteed by the Fourth and Fifth Amendments of the Constitution of the United States.

III. Whether the Court erred by denying the Defendants' motion to suppress the oral statements made by the Defendants while they were seized by agents of the United States without

benefit of Miranda warnings, all in violation of the Fifth Amendment of the Constitution of the United States.

LIST OF PARTIES TO THE PROCEEDING IN THE SIXTH CIRCUIT COURT OF APPEALS

The parties to the proceeding in the Sixth Circuit Court of Appeals were Dorothy Ann Knox, No. 85-5952 and 86-5089, Kimberly LaWanda Ware, No. 86-5907, and Altmonte S. Champegnie, No. 86-5200, Defendants-Appellants, and the United States, Plaintiff-Appellee.

ABBREVIATIONS USED IN THE TEXT

The abbreviation "S.Tr." stands for the Court Reporter's transcript of the proceedings held on the Defendant's motion to suppress on August 30, 1985.

The abbreviation "C.Tr." refers to the Court Reporter's transcript of the bond hearing held for Defendant Champegnie on July 2, 1985.

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Petitioners, Dorothy Ann Knox and Kimberly LaWanda Ware respectfully petition this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit which opinion was issued February 12, 1988, and which affirms the judgment of the United States District Court for the Western Division, Western District of Tennessee in this cause.

OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit dated February 12, 1988 is set forth in full in Appendix A hereto. A timely petition for rehearing on behalf of Petitioners Dorothy Ann Knox and Kimberly LaWanda Ware was reviewed by the Court of Appeals in this

case. That petition for rehearing was denied by order dated March 30, 1988. A copy of that order is set forth in full in Appendix B. Accordingly, by Rule 20.4 of the Supreme Court Rules, the instant petition for a writ of certiorari is timely. The opinion of the United States District Court for the Western District of Tennessee denying the Petitioners Motion to Suppress is set forth in full in Appendix C.

JURISDICTION

The jurisdiction of this Court upon this petition for writ of certiorari is invoked pursuant to 28 U.S.C. 1254(1).

The Court of Appeals for the Sixth Circuit denied the Petitioners appeal by opinion dated February 12, 1988, Appendix A hereto.

A timely motion for rehearing was filed and denied by the Court of Appeals for the Sixth Circuit on March 30, 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment IV.

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same

offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The appeal before the United States Sixth Circuit Court of Appeals below as to Defendant Dorothy Ann Knox was from a conditional plea of guilty and reservation of appeal rights pursuant to Rule 11 of the Federal Rules of Criminal Procedure, entered on October 8, 1985 in the Western District of Tennessee. The appeal of Kimberly LaWanda Ware was from a conviction rendered by a jury on October 10, 1985 in the United States District Court for the Western District of Tennessee, Western Division, the Honorable Robert McRae, Judge, presiding.

The Petitioners were charged in a one count indictment in the United States District Court for the Western District of Tennessee and convicted of the violation of possession with intent to distribute a schedule II controlled substance (cocaine) and aiding and abetting in the same in violation of Title 21 U.S.C. §841(a)(1). All of the cases were tried in the District Court under docket number 85-20121-M. Petitioner Knox was sentenced to two years incarceration with three years special parole term to follow on December 13, 1985. Petitioner Ware was sentenced on December 13, 1985 to a sentence of three years incarceration with three years of special parole to follow. The Petitioners timely filed notices of appeal and the case was docketed and

heard by the United States Sixth Circuit as docket numbers 85-5952, 86-5089 and 86-5097.

STATEMENT OF THE FACTS

On the morning of June 14, 1985, Special Agent Richard Holmes of the Drug Enforcement Administration (DEA), Memphis, Tennessee office, received a telephone call from DEA agent Paul Markonni of the Atlanta, Georgia DEA office who was assigned to the Atlanta Airport. Agent Markonni advised agent Holmes that he had observed one black male and two black females (later identified as the original three defendants) when they exited an airplane arriving from Miami, Florida enroute to Memphis. Agent Markonni reported that he noticed one of the females (Ware) holding one of her arms across her abdomen, as if she

were holding something and rush into the bathroom. He also reported that he noticed that they had initially acted like they didn't know each other, but later he observed the three talking with each other. Agent Markonni also checked with their airline and learned that each reservation had been made at the same time the previous day, and that the tickets had been purchased with cash. He also checked a "call-back" telephone number in Miami that had been given to the airline by the person who made the reservations, and discovered that the person answering the phone at that number did not know any of the defendants (Richard Holmes at S.Tr. 13-14).

After this information was relayed to agent Holmes in Memphis, he and other local officers were waiting at the

Memphis Airport for the defendants' flight to arrive from Atlanta. As they disembarked at the gate area located on the second level of the airport, Holmes saw Ware hand a blue travel bag (unisex bag) she was carrying to Knox. He then approached the defendants, identified himself, showed them his DEA badge, and asked them to accompany him and the other officers (four or five in number) to another location in the lower level of the airport that was the office of Airport Security. However, prior to proceeding there, agent Holmes asked the female defendants if he could "assist" them in carrying their bags. He was given the blue unisex travel bag (wherein approximately one kilogram of cocaine was later found), by Knox or someone, and he carried it downstairs to

the baggage claim area, accompanied by the three defendants and the other officers. After retrieving the defendants' luggage and Champegnie's briefcase, they all proceeded to the Airport Security Office. The defendants were separated and placed into three small interrogation rooms. An officer stood at or near the door to each room. The defendants' respective pieces of luggage were placed in each one's respective small room. The blue travel bag referred to above was removed and set outside Ware's room (Richard Holmes at C.Tr. 6; Richard Holmes at S.Tr. 47, 51-52, 54-57, 63, 91, 113, 114). The defendants were not removed to the private area for security purposes. The officer had no reason to assume that they had weapons (S.Tr. 102, 103).

In addition, agent Holmes had earlier (before he went to the Memphis Airport) arranged to have a police officer with a dog trained to respond to contraband drugs meet him at the airport (Richard Holmes at S.Tr. 16-17).

Agent Holmes had targeted these defendants as the objects of a criminal investigation (S.Tr. 15-17). As a federal law enforcement officer he was conducting an investigation into possible violations of federal criminal statutes, particularly those relating to Title 21, United States Code. As part and parcel of that investigation, while the defendants were separated from each other and the public, Holmes interrogated each of them (S.Tr. 19-21). Going from closed room to closed room, from putative defendant to putative defendant, he

interrogated them. He started with Champegnie, then Knox and on to Ware. According to Holmes, each defendant at first denied knowing the other, then later acknowledged that they did. However, not until after the cocaine was found in the blue unisex bag, and after the defendants were officially "placed under arrest", were any of them advised of their Miranda warnings. (Richard Holmes at C.Tr. 4-5; Richard Holmes at S.Tr. 18-19, 54-55, 65-67, 79).

Before he searched defendants' luggage including Champegnie's briefcase and before he obtained a signed "Consent to Search" form from each of them, while they were sequestered and being questioned, Holmes unzipped the blue unisex travel bag situated just outside Ware's room, and had the trained police

dog go over the defendants' luggage in their presence. The dog responded positively for cocaine when it went over the various pieces of luggage. (Richard Holmes at S.Tr. 18-20, 61-62, 72.) Thereafter a full "consensual" search took place (S.Tr. 21-25). Cocaine was found in the blue bag.

The defendants were never told that they were free to leave nor were they told they were under arrest until after the cocaine was found (S.Tr. 54).

REASONS FOR GRANTING THE WRIT

The case involves important questions of federal law in the interpretation of both the Fourth and Fifth Amendments to the United States Constitution which have not been completely settled by this Court and

upon every issue, the United States Sixth Circuit Court of Appeals decided the federal questions in a way that is in conflict with the applicable decisions of this Honorable Court.

The government's entire case was based upoon the seizure of approximately one kilogram of cocaine from a unisex bag carried by the defendants at the Memphis International Airport. The cocaine was seized after an unlawful seizure of these defendants, an unlawful search and after the defendants were in custody, and not warned of their constitu tional rights as required by Miranda v. Arizona, 384 U.S. 436 (1966). The defendants' statements, consent to search and resulting search and seizure of the cocaine being the product of unlawful seizure, search and

interrogation should have been suppressed by the District Court. Arkansas v. Sanders, 422 U.S. 753 (1979); Miranda v. Arizona, 384 U.S. 436 (1966).

I

A. THE GOVERNMENT LACKED A REASONABLE OR ARTICULABLE SUSPICION UPON SEIZING THE PETITIONERS AND, THEREFORE, THE SEIZURE WAS UNLAWFUL.

The trial court and United States Sixth Circuit Court of Appeals correctly found that upon the Petitioners being approached by the government agents upon deplaning in Memphis, that a reasonable person would not have believed that they were free to leave and, therefore, they were seized within the meaning of the Fourth Amendment of the Constitution of the United States. Florida v. Royer, 103 S.Ct. 1319 (1983); Reid v. Georgia,

448 U.S. 438 (1980); U.S. v. Jefferson, 650 F.2d 854 (6th Cir. 1981). The government justifies the seizure of the persons on the basis that the officers possessed a reasonable or articulable suspicion that criminal activity was afoot and that an investigatory field stop was proper under the circumstances. U.S. v. Sharpe, 470 U.S. 675 (1985). In the present case, the government asserts that the stop is justified because Petitioner Ware held her arm across her stomach when deplaning in Atlanta, the tickets were purchased with cash shortly before the flight, an incorrect callback number was given to the airline and the Petitioners were traveling together while attempting to give the appearance that they were not traveling together. In Reid v. Georgia, 448 U.S. 438 (1980),

this Honorable Court found that as a matter of law the defendant who was traveling on a short trip from a source city in the early morning hours with a companion and attempting to conceal the fact that he had a companion and neither carrying any luggage, except identical shoulder bags, did not establish sufficient facts for the agents to have reasonably suspected the defendant of criminal activity. To the same effect is U.S. v. Jefferson, 650 F.2d 854 (6th Cir. 1981). In the present case there simply were not sufficient facts to establish anything beyond mere suspicion and, therefore, the seizure was unlawful and all evidence secured thereafter should have been suppressed.

B. THE SCOPE OF THE SEIZURE OF THE PETITIONERS, REMOVING THEM FROM THE PUBLIC AREAS OF THE AIRPORT AND

SEPARATING THEM INTO THREE ROOMS WITH AN OFFICER AT OR NEAR THE DOOR OF EACH ROOM EXCEEDED THE SCOPE OF AN INVESTIGATORY FIELD STOP.

In Florida v. Royer, 103 S.Ct. 1319 (1983), the government had a reasonable or articulable suspicion to temporarily stop and question the defendant at the airport. However, when the defendant was removed from the public areas of the airport to a private room for interrogation in the investigation of his private effects this Court held that the removal exceeded the permissible scope of an investigatory field stop. The present case is identical to Florida v. Royer, 103 S.Ct. 1319 (1983), in that the defendants were immediately upon being approached by the DEA taken from the public areas to private interrogation rooms. In addition, the government did

not attempt to justify the removal of the Petitioners from the public areas on the basis of security. On the contrary, there were no security reasons for removing the Petitioners from the public areas (S.Tr. 102, 103). Therefore, the removal of the Petitioners from the public areas and separating them into individual rooms far exceeded the scope of an investigatory field stop and all subsequent evidence seized was the product of the unlawful search and seizure and should have been suppressed. Reid v. Georgia, 448 U.S. 438 (1980).

C. THE LENGTH OF THE SEIZURE (APPROXIMATELY 30 MINUTES) EXCEEDED THE PERMISSIBLE TIME LIMIT FOR AN INVESTIGATORY FIELD STOP.

The time from the initial seizure of the Petitioners until the drugs were found was estimated between ten and

thirty minutes by Agent Holmes. The trial court made no specific factual finding as to the length of the detention. However, since the government has the burden of proof in justifying a warrantless seizure and search, the inference must be drawn unfavorable to the government that the detention was, in fact, thirty minutes. In assessing the validity of the length of a detention the relevant inquiry is whether the police acted diligently and pursued a means of investigation that was likely to confirm or dispell their suspicions quickly. U.S. v. Sharpe, 470 U.S. 675 (1985).

> "A Court making the assessment should take care to consider whether the police were acting in a swiftly developing situation and in such cases

> the Court should not indulge in unrealistic second guessing...." U.S. v. Sharpe, 470 U.S. 675, 686-687 (1985).

In the present case, there existed no swiftly developing situation. Agent Holmes had been notified well in advance of the suspects flight and arrival time in Memphis and Agent Holmes was in the airport with numerous local law enforcement agents and had already contacted and had available the metro narcotics drug sniffing dog. The government was in total control of the situation at all times. The Petitioners did not flee, as did the defendants in U.S. v. Sharpe, supra. The lengthy delay in this matter resulted from the desire of the government to remove the Petitioners from the public areas and to conduct custodial interrogations. Therefore, the duration

of the detention of these Petitioners far exceeded the scope for an investigatory field stop and all of the evidence should have been suppressed.

U.S. v. Sharpe, 470 U.S. 675 (1985).

II

THE PETITIONERS WERE ENTITLED TO MIRANDA WARNINGS PRIOR TO CUSTODIAL INTERROGATION AND THE EXECUTION OF CONSENT TO SEARCH FORMS.

Berkemer v. McCarty, 468 U.S. 420 (1983), set forth the test for determining when Miranda rights must be given to a suspect in an investigatory field stop. The Miranda (Miranda v. Arizona, 384 U.S. 436 (1966) rights must be given when a person is deprived of his freedom of action to a degree associated with formal arrest. The issue was "whether a traffic stop exerts upon a detained per-

son pressures that sufficiently impair his free exercise of his privilege against self-discrimination to require that he be warned of his constitutional rights." Berkemer v. McCarty, 468 U.S. 420, 437 (1983). The U.S. Supreme Court held that a detention of a motorist on a public highway did not amount to such an encounter because two factors were present. First, the stop would be brief, lasting only a few minutes and this would be known by the motorist who would realize that the most that would probably occur to him would be a traffic citation. The Court contrasted that situation to the station house interrogation where the detainee would be aware that the questioning would continue until the interrogators received the answers they sought. Berkemer v.

McCarty, 468 U.S. 438, citing Miranda v. Arizona, 384 U.S. at 451. In the present case, the Defendants were taken from the public area to private interrogation rooms and separated from their companions. Certainly the DEA intended to ask more than "just a few questions." "Just a few questions" could have been asked in the public corridor after the Defendants deplaned.

The second basis of the decision in Berkemer v. McCarty, supra, was that the circumstances associated with the typical traffic stop were not such that the motorist felt completely at the mercy of the police. Berkemer v. McCarty, 468 U.S., 420, 438 (1983). The Court noted that the motorist was in a public area, there were witnesses from both pedestrians and persons in cars and that

the exposure to public view reduced the likelihood of incriminating statements. The Court further held that Miranda warnings were not required because the detained motorist was confronted by one or at the most two policemen, which further lessened his sense of vulnerability, holding that the traffic stop was not a "police dominated" situation. In the present case, the Defendants were met by numerous law enforcement officers, taken from the public area to private police dominated interrogation rooms. Of importance is that the Defendants did not go get their baggage on their own, but had requested the permission of the DEA to do so, and were accompanied and assisted by the officers in retrieving their baggage. The only reasonable and logical conclu-

sion that can be drawn from this occurrence is that the Defendants were under the control and direction of the officers. Clearly, Miranda warnings were required.

In U.S. v. Beraun-Panez, 812 F.2d 578 (9th Cir. 1987), an individual was interrogated by two law enforcement officers on the side of the road in an area where the suspect was working and with which he was well familiar. The Ninth Circuit, relying upon Berkemer v. McCarty, 468 U.S., 420 (1983), noted that of great significance was whether the interrogation was conducted in public or in private. In holding that the suspect was in custody for the purposes of Miranda the Court noted that the interrogation, while on a public road in a remote area where no passerby would likely be present. The Court

further noted that the suspect's co-worker was not permitted to approach the Defendant during the questioning. The Ninth Circuit held that the Defendant was clearly in custody as he was interrogated essentially in private and was separated from his companions, thus creating the police dominated atmosphere which was prohibited in Miranda and Berkemer v. McCarty, supra. The exact same situation exists in the present case. The Defendants were taken from a public area, placed in private interrogation rooms and separated from their companions. The conclusion that the Defendants reasonably believed that they could not leave and were in a police dominated atmosphere and in custody is inescapeable and, therefore, the rule of Miranda v. Arizona, 384 U.S. 436 (1966)

applies and all of the evidence of the government must be suppressed.

CONCLUSION

For the reasons stated above, the writ of certiorari should be granted and the Court should review and decide the issues and the judgment of the United States Sixth Circuit Court of Appeals should be reversed.

Respectfully submitted,

Dated: April 27, 1988

BY: _____

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APPENDIX A

RECOMMENDED FOR FULL TEXT PUBLICATION

See, Sixth Circuit Rule 24

NOS. 85-5952, 86-5089, 86-5097, 86-5200

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL
v.	)	from the
	)	United States
DOROTHY ANN KNOX,	)	District
(85-5952, 86-5089),	)	Court for the
KIMBERLY LAWANDA	)	Western
WARE (86-5097),	)	District of
ALTAMONT S. CHAMPEGNIE	)	Tennessee
(86-5200),	)	
	)	
Defendants-Appellants.		

Decided and Filed February 12, 1988

Before: JONES and GUY, Circuit Judges;
EDWARDS, Senior Circuit Judge.

GUY, Circuit Judge, delivered the opinion of the court, in which JONES, Circuit Judge, joined. JONES, Circuit Judge, (pp. 19-25) also delivered a separate concurring opinion. EDWARDS, Senior Circuit Judge, (pp. 26-31 delivered a separate dissenting opinion.

GUY, Circuit Judge. A one-count indictment was returned against appellants Knox, Ware, and Champegnie charging them with aiding and abetting one another in the possession with intent to distribute a Schedule II controlled substance (cocaine), in violation of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2. The charges arose out of defendants' arrest at the Memphis airport following the discovery of the cocaine in one of the bags in their possession. All three defendants moved

to suppress the evidence and a full evidentiary hearing was conducted by the district court. Testimony was given by the arresting officer at the hearing; all three defendants elected not to testify. The district court denied defendants' suppression motions, finding that, although a seizure had occurred, it constituted a permissible investigatory detention based on a reasonable and articulable suspicion that defendants were engaged in criminal activity. The district court also found that none of the defendants had standing to challenge the search of the bag containing the cocaine, since both Ware and Knox had specifically disclaimed ownership of the bag and, therefore, none of the appellants had exhibited a legitimate expectation of privacy as to its contents.

Following this rule, defendant Knox entered a conditional guilty plea pursuant to Fed. R. Crim. P. 11. Ware and Champegnie were tried and convicted in a subsequent jury trial. Defendants allege that the district judge erred in:

1) denying the motion to suppress;

2) failing to suppress oral statements made by defendants during questioning;

3) holding the defendants had abandoned the bag in which the cocaine was discovered and therefore lacked standing to contest its search; and

4) denying defendant Champegnie's motion for judgment of acquittal at the close of the government's case.

Finding no error, we affirm.

I.

On June 14, 1985, Memphis DEA Agent Richard Holmes received a telephone call from Special Agent Paul Markonni of the Atlanta, Georgia, office of the DEA. Markonni informed Agent Holmes that he had observed three individuals en route to Memphis who had acted suspiciously during a stopover at the Atlanta airport. Markonni had noticed that the three individuals, later identified as the defendants, appeared not to know each other as they exited the plan, which had just arrived in Atlanta from Miami, Florida. Markonni observed defendant Ware holding her stomach as she left the plane and rushed to an airport restroom. He also reported that defendant Champegnie had initially acted as if he did not know Ware or Knox,

although later the three were observed talking together. Markonni checked with the airline and discovered that each reservation had been made at the same time on the previous day and that all three one-way tickets had been purchased with cash. Upon dialing the Miami call-back number given to the reservations agent, Markonni found that the person at that number did not know any of the persons listed on the reservations.[1]

Upon receipt of this information, Agent Holmes, a thirteen-year veteran with the DEA who had extensive experience working airport detail, became suspicious that the three indivi-

---

[1]Upon subsequent detention for questioning by Agent Holmes, Altamont Champegnie gave his real name, although his airline ticket indicated that his name was A. Stanford.

duals described by Agent Markonni were engaged in drug smuggling. He requested assistance from Memphis Metro Narcotics, including a specially trained "drug sniffing" dog, and arranged to meet with the officer at the Memphis airport. When defendants deplaned, they looked around and appeared not to know each other. Ware was carrying a blue travel bag which she subsequently handed to Knox just outside the gate area. At this point, Holmes approached the trio, identified himself as a DEA agent, and asked if they would accompany him downstairs to the airport security office. Defendants agreed but requested that they pick up their luggage first. Holmes asked Knox and Ware if he could assist them with their bags, whereupon Knox handed him the blue travel bag.

Defendants were placed in separate rooms in the vicinity of the security office, along with their luggage. Each defendant was then questioned separately; each initially denied knowing the other two. Both Champegnie and Knox stated that they had lost their airline tickets; however, when asked for her ticked, Ware pulled several tickets from her purse. Holmes asked to see them and Ware acquiesced; they were listed in the names of Kim Ware, Dorothy Knox, and A. Stanford (the name under which defendant Champegnie was traveling). As Holmes testified at the suppression hearing, although they had not specifically been told that they could leave at any time, they had been informed that they were not under arrest and that Holmes "just wanted to question them."

Once Champegnie and Knox discovered that Holmes had seen the tickets, they acknowledged that they knew each other, although Champegnie first represented that he had only met Knox and Ware ont he plane and, shortly thereafter, stated that he had known them for a couple of months. Holmes then asked each defendant if they would consent to a search of their luggage. The dog from the Metro Narcotics unit was brought to the area and reacted positively for drugs as to all pieces of defendants' luggage. Defendants then signed consent forms for the search, although both Knox and Ware denied ownership or control of the blue travel bag. The search yielded approximately one kilogram of cocaine, found in the blue travel bag, as well as a book on cocaine processing entitled The

Cocaine Handbook, found in Champegnie's briefcase. At this point, all three were placed under arrest and given Miranda warnings. Miranda v. Arizona, 384 U.S. 436 (1966). The total length of time of defendants' detention prior to the arrest is disputed, although it appears to have been between ten and thirty minutes.

II

Following the evidentiary hearing on the motion to suppress, the district court entered its order denying the motions. In so ruling, the court found that sufficient objective and particularized facts existed to support the agents' suspicions and thereby rendered their investigatory detention and questioning of the defendants constitutional. Further, the court held that

the disclaimers of Knox and Ware as to ownership of the blue travel bag resulted in their abandonment of that item, thereby depriving them of standing to challenge the constitutionality of its search or subsequent admission into evidence of the contraband it contained.

Defendants raise a number of challenges to the validity of their airport detention; namely, that their initial seiqure was illegal because the agent lacked a reasonable, articulable suspicion of criminal activity that removal of defendants to the airport security office for "custodial interrogation" exceeded the limits of an investigatory field stop, and that the duration of the seizure also exceeded the permissible time limit for such a stop. Next, they argue that their inconsistent statements, first denying

from the restroom, she was no longer holding her stomach. Markonni also reported that the defendants had initially acted as through they didn't know each other, but later had talked with one another. Markonni checked with the airline and learned that each reservation had been made at the same time the previous day and that the tickets had been purchased with cash. He also checked a "call-back" telephone number in Miami that had been given to the airline by the person who had made the reservations, and discovered that the person who answered the telephone at that number did not know any of the defendants.

Agent Holmes and officers from Memphis Metro Narcotics met the defendants' flight at the Memphis

Airport. The officers stationed themselves outside the gate area and observed the defendants as they left the plane. All the officers were in plain clothes and no guns were drawn; a uniformed airport security guard, however, may have been positioned somewhere near the gate area. Agent Holmes noted that the defendants entered the gate area separately, and "looked around and acted like they didn't know each other." Agent Holmes also noticed Ware carrying a blue travel bag which she subsequently handed to Knox just outside the gate area.

Agent Holmes then approached the defendants, identified himself as a Special Agent of the DEA, and then thold them that he would like to speak with them for a few minutes. Holmes asked

the defendants to accompany him and the other officers (four or five in number) to the Airport Security Office. The defendants agreed, but requested that they pick up their luggage first. Agent Holmes and the local officers then assisted the defendants in retrieving their luggage from the baggage claim area. Agent Holmes asked both female defendants, either before or after retrieving the checked luggage, if he could "assist" them in carrying their bags. He was given the blue travel bag, according to the government by Knox, and according to the defendants, by "Knox or someone."

All of the above facts represent both lawful and effective police work.

After they arrived in the Airport Security Office, the defendants were

each placed in separate rooms. Agent Holmes went from room to room, questioning each defendant separately. Agent Holmes did not, during this questioning, give any of the defendants Miranda warnings.

All three defendants initially denied that they knew each other. When Agent Holmes asked to see defendant Champegnie's identification and airline ticket, Champegnie identified himself as Altamont Champegnie, but stated that he had lost his boarding pass and airline ticket. Knox also told Agent Holmes that she did not have her ticket. While questioning Ware, Agent Holmes saw Ware reach into her purse to retrieve her identification, and in doing so, she pulled out a group of airline tickets and boarding passes. Agent Holmes asked

Ware if he could see the tickets. The tickets and boarding passes were listed in the names of Kim Ware, Dorothy Knox, and A. Stanford, the latter of which was later discovered to be the name under which Champegnie was traveling. Once Champegnie knew that Agent Holmes had seen the tickets, he acknowledged that he did know Ware and Knox, although he first represented that he had only met them on the plane, and shortly thereafter, he stated that he had known them for a couple of months. While Agent Holmes was questioning the defendants, each defendants' luggage was located with them in their respective rooms, except for the blue travel bag, which was placed just outside the door of Ware's room.

Agent Holmes unzipped, but did not search, the blue travel bag prior to obtaining each defendant's consent to search. Holmes testified that he unzipped the bag out of habit, since it is standard procedure to check for a weapon when interviewing an individual.

In addition, Holmes had a trained police dog go over the defendants' luggage in their presence. The dog responded positively for cocaine as to both the luggage and the blue travel bag. Subsequently, each defendant consented to a search of his or her individual luggage, but denied ownership or control of the blue travel bag. Ware claimed that the bag belonged to Knox and Knox claimed that the bag belonged to Ware. Approximately one kilogram of cocaine, valued at $35,000 was disco-

vered in the blue travel bag. The blue travel bag also contained female and unisex clothes (clothes which can be worn by either a man or a woman). Neither drugs nor contraband were found in any of the luggage, but a book on cocaine processing titled The Cocaine Handbook was found in Champegnie's briefcase. The book covered such topics as "Testing for Purity, Health Risk, Safeguards, Improving Quality, Inside the Cocaine Trade, and Cocaine and the Law."

After the search and discovery of the cocaine, the defendants were given Miranda warning and placed under formal arrest. Agent Holmes also testified that he had advised defendants of their rights prior to their signing the consent forms. The defendants had been

detained and/or questioned from ten to thirty minutes prior to their arrest (the parties' estimates vary and the District Court did not attempt to resolve this disputed question of fact). During the detention period the defendants were neither told they were free to go nor that they were under arrest. The District Court found that "[a] seizure of the person did occur when Agent Holmes stopped the defendants and requested that they come with him for questioning."

It appears to me that there is no question but that there was evidence of violation of the drug laws by all three of the defendants. What is at issue, however, is whether or not the procedures which were employed in isolating the defendants and questioning them

before giving them Miranda warnings so violated their constitutional rights as to require our concluding that the critical evidence seized should have been and must now be suppressed. Four cases are especially cited to us in this regard; United States v. Tolbert, 692 F.2d 1041 (6th Cir. 1982), cert denied, 464 U.S. 933 (1983); Rakas v. Illinois, 439 U.S. 128 (1978); Terry v. Ohio, 392 U.S. 1 (1968) and Reid v. Georgia, 448 U.S. 438, 440 (1980).

There is, however, a later opinion of the U.S. Supreme Court which I regard as controlling in our instant case. See Berkemer v. McCarty, 468 U.S. 420, 434 (1984). In Berkemer, the Supreme Court unanimously affirmed this Court's decision in McCarty v. Herdman, 761 F.2d 361 (1983). The single headnote in this

Court's treatment of the McCarty case stated "Miranda warnings must be given to all individuals prior to custodial interrogation, whether the offense investigated be a felony or a misdemeanor traffic offense."

As I read the record of our instant case it appears clear that each defendant was isolated in a separate room and questined from between ten and thirty minutes by law enforcement officers before Miranda warnings were given. It appears that evidence derived from this unwarned questioning after seizure and in isolation was admitted at trial against defendants. Under these circumstances, the convictions should have been and must now be vacated.

I am aware, of course, that the Supreme Court in Berkemer also held that

Miranda warnings need not be given during an ordinary traffic stop. The Court further noted "the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda." 468 U.S. at 440. However, whether the detention in the present case is considered a Terry stop, or a full seizure, it is clearly more akin to the station house interrogation which prompted Miranda than the ordinary traffic stop involved in Berkemer. Indeed, the airport security office functions as a station house at the airport, and should be treated accordingly. See Miranda, 384 U.S. at 445 (consolidated Miranda cases all involve questinging in a room in which defendant was cut off from the outside world); Berkemer, 468 U.S. at 437 (Miranda must be strictly

enforced in situations inwhich the concerns that produced that decision are implicated).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs. O R D E R

DOROTHY ANN KNOX, (85-5952/86-5089)
KIMBERLY LAWANDA WARE (86-5097)

Defendants-Appellants.

Before: JONES, GUY, Circuit Judges and
EDWARDS, Senior Circuit Judge

Upon consideration of the petition for rehearing filed by the appellants the court concludes that the issues raised herein were fully considered upon the original oral argument and decision of this case.

It is therefore ORDERED that the petition for rehearing be and it hereby is denied. Judge Edwards adheres to his dissent.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

Leonard Green, Chief Deputy

Filed March 30, 1988

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA

VS. No. 85-20121-M

STANFORD ALTAMONT CHAMPEGNIE,
KIMBERLY LAWANDA WARE and
DOROTHY ANN KNOX,

Defendants.

RULING ON MOTIONS TO SUPPRESS

In this case, all three of the defendants have filed motions to Suppress based upon alleged improper searches and seizures of their person and property at the Memphis, Tennessee International Airport.

Facts

An evidentiary hearing was held at which the facts hereinafter set forth were established. The seizures complained about in Memphis, Tennessee

were precipitated by information telephoned to Special Agent Richard Holmes of the Memphis, Tennessee office of the Druge Enforcement Administration (DEA) by Special Agent Paul Markonni of the Atlanta, Georgia office of the DEA. Agent Markonni reported that the three defendants, Champegnie, Ware and Knox, first came under observation by law enforcement officers in the Atlanta Airport as they exited an airplane arriving from Miami, Florida. He further reported that he first noticed the defendants because the arm of defendant Ware was placed across her abdomen, as if holding something. Each of the defendants proceeded to restrooms and upon emerging, it was noted that Ware no longer held her stomach. He also reported that he noticed that defendant Champegnie had initially acted as if he

didn't know the other defendants, and only later did he speak with his companions. Upon checking with their airline, Markonni discovered that each of the reservations had been made at the same time the previous day and that the tickets had been purchased with cash. A check of the "call-back" number revealed that no one at that telephone number knew the defendants. After this information was relayed to Agent Richard Holmes in Memphis, he was waiting at the airport for the defendants' flight when it arrived from Atlanta. As they disembarked, he saw Ware hand a travel bag she was carrying to Knox. Holmes then approached the trio, identified himself, and requested that they follow him to another location in the airport for questioning. The defendants acquiesced

and were taken to three separate rooms. Their luggage subsequently was sent up to the vicinity of the separate rooms. They were neither told that they were free to go nor that they were under arrest. Early in the process the defendants contended that they did not know each other, but later it was discovered that the defendant Knox had the airplane tickets for all three defendants. Following questioning of from ten to thirty minutes (the government and the defendants' estimates do not correspond), each defendant then consented to a search of his or her individual baggage. Each defendant, however, denied ownership or control of the travel bag.

The search of the luggage revealed nothing. However, inside the travel bag, in addition to some female and

"unisex" clothes (sport garments which could be worn by either a man or woman), the agents found approximately one kilogram of a substance resembling cocaine. A dog from the Metro Narcotics Unit was brought to the area and reacted by pointing to the substance. The defendants were then arrested.

Issues of Law

Each of the defendants has moved to suppress the cocaine found in the travel bag despite the fact that at the time of the search each also denied ownership or possession of the bag. The government argues that the bag was abandoned and thus the defendants lack standing to challenge the search, since by their disclaimer, any expectation of privacy was relinquished. The Sixth Circuit Court of Appeals has provided precise

guidance for this Court with its decision in United States v. Tolbert, 692 F.2d 1041 (6th Cir. 1982), a case with many similarities of fact and identical issues of law. In that case, the court notes at the onset that "each case raising a Fourth Amendment issue must be judged on its own facts," citing United States v. Mendenhall, 446 U.S. 544, 554 n.6 (1980). Tolbert holds invalid any disclaimer of property made after a defendant has been illegally seized. Thus the Court's first inquiry must focus on whether the stop and detention of the defendants at the Memphis airport meets constitutional muster.

The Constitutionality of the Seizure

A seizure of the persons did occur when agent Holmes stopped the defendants and requested that they come with him

for questioning. United States v. Jefferson, 650 F.2d 854 (6th Cir. 1981) (a stop followed by an immediate request to accompany is considered a seizure), but brief investigatory detentions are permissible if "supported by a reasonable and articulable suspicion that the person seized [was] engaged in criminal activity." Reid v. Georgia, 448 U.S. 438 (1980). In determining which suspicions are "reasonable and articulable," courts are directed to look at the totality of the circumstances. United States v. Cortez, 449 U.S. 411, 417 (1981). In Cortez the Supreme Court instituted a two-part test in an attempt to further define this amorphous standard: the police must have both an "objective" and a "particularized" basis for their suspicions.

The first requirement is satisfied if the defendant displays "objective" indications of criminality, such as following a common pattern of criminal operation. This pattern need only by recognizable by one "versed in the field of law enforcement." Cortez at 417. In the case at bar, the defendants fit several characteristics of the DEA's drug courier profile: 1) they were traveling from Miami, a source city; 2) their airline tickets were purchased with cash; and 3) the call-back number given to the airline was not accurate. Thus, there was enough "objective" evidence to support a reasonable and articulable suspicion by police.

As noted above, satisfaction of the "objective requirement is not enough. Cortez also requires that acts of the

defendants themselves arouse a suspicion of criminal activity. At the time of the stop, the police also had the requisite "particularized" suspicion by Agent Markonni's having seen defendant Ware exit the plane as if holding something under her clothing. He also noted that defendant Champegnie initially acted as if he were not traveling with the other two defendants. These actions directed the attention of the police to these particular defendants.

Taken together, these objective and particularized facts provide a reasonable and articulable basis for the suspicion of the police, and thus the investigatory detention of the defendants violated no constitutional protections.

The Abandonment Issue

The government maintains that by disclaiming ownership and possession of the travel bag, the defendants lack standing to contest its search. The government is correct in its belief that an abandonment results in a lack of standing. As the Tolbert court states:

> It should be emphasized that the term "abandonment," as employed herein, does not refer to traditional concepts of property law. The concept of abandonment considered in the present context is a Fourth Amendment issue and the "capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois, 436 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978). Thus, the crucial inquiry is "whether governmental officials violated any legitimate expectation of pri-

vacy held by the [defendant]" Rawlings v. Kentucky, 448 U.S. 98, 106, 100 S.Ct. 2556, 2562, 65 L.Ed.2d 633 (1980). Tolbert at 1044.

Defendant Champegnie has claimed that the clothing in the bag is his. However, ownership of the property in the bag by any of the defendants is irrelevant. Rather, the Court must focus upon whether the defendants had a legitimate expectation of privacy in the bag at the time of search. It is widely held that a disclaimer of ownership of luggage demonstrates a lack of such an expectation. See, e.g., United States v. Kendall, 655 F.2d 199 (9th Cir. 1981), cert. denied, 455 U.S. 941, 102 S.Ct. 1434, 71 L.Ed.2d 652 (1982); United States v. Berd, 634 F.2d 979 (5th Cir. 1981); United States v. Canady, 615 F.2d 694 (5th Cir. 1980), cert. denied,

449 U.S. 862, 101 S.Ct. 165, 66 L.Ed.2d 78 (1980); United States v. Colbert, 474 F.2d 174 (5th Cir. 1973) (en banc). The defendants' abandonment extinguished any legitimate expectations of privacy they may have had in the bag, and thus none of the defendants, Champegnie, Knox, or Ware, has standing to challenge the search. Therefore, the motions to suppress are denied.

IT IS SO ORDERED.

ENTERED: this 30th day of September, 1985.

ROBERT M. McRAE, JR.
UNITED STATES DISTRICT JUDGE